IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO. 434 OF 2007
IN
WRIT PETITION NO. 239 OF 2007

Prashant S.Dhumde)
of Thane, Indian Inhabitant, residing at A-104,)
Parijat Building, Kasturi Park, Kalyan (West),)
Dist. Thane, Pin: 421 103.)..Appellant

versus

1. K.M. Agarwal College of Arts,)
Commerce & Science, Kalyan Padga Road,)
Gandhare (Adharwadi), Kalyan-421 301)

2. Dr. R.B. Singh,)
The Chairman, K.M. Agarwal College of Arts,)
Commerce & Science, Kalyan Padga Road,)
Gandhare (Adharwadi), Kalyan-421 301)

3. Vijaynarayan R. Pandit,)
The general Secretary,)
K.M. Agarwal College of Arts,)
Commerce & Science, Kalyan Padga Road,)
Gandhare (Adharwadi), Kalyan-421 301)

4. M.S. Raje, The Principal,)
K.M. Agarwal College of Arts,)
Commerce & Science, Kalyan Padga Road,)
Gandhare (Adharwadi), Kalyan-421 301)..Respondents

Mr. H.D. Buch with Mrs. Bina Dholakia for the appellant.
Mr. K.K. Jadhav for the respondents.

CORAM: **SWATANTER KUMAR, C.J.** &
SMT. RANJANA DESAI, J.

Judgment reserved on : July 09, 2007
Judgment delivered on: July 19, 2007

JUDGMENT (Per Swatanter Kumar, C.J.):

Challenge in this appeal is to the order dated 26th February, 2007, passed in Writ Petition No. 239 of 2007, whereby the learned single Judge dismissed the writ petition in limine filed by the appellant. In the said petition, the appellant had questioned the order dated 10th November, 2006 passed in Appeal No. 11 of 2006 by the Mumbai University and College Tribunal at Mumbai whereby the appeal filed by the appellant challenging his termination had been dismissed. Challenge to the judgment is on the ground that some article of charges against the appellant were not proved. The persons identically situated were not charged and no disciplinary proceedings were taken against them, thus singling out the petitioner and there was apparent contradiction in the statement of the witnesses during the departmental proceedings. It is contended that the learned single Judge has erred in fact and in law in not allowing the writ petition filed by the petitioner.

2. The appellant joined the services of the first respondent

College on 1st November, 1994 as an Office Superintendent. He continued to serve in the said office. On 11th September,2004, the appellant was served with a charge sheet dated 8th September, 2004, containing 10 article of charges. Still during the pendency of the enquiry, second charge sheet dated 13th January, 2005 was served upon the appellant stating nine additional charges. The departmental enquiry was conducted against the appellant and finally the enquiry officer held the appellant guilty on various charges and exonerated him of four of the charges listed in the first charge-sheet and two of the charges listed in the second charge-sheet. On 2nd March, 2006, a show cause notice was served upon the appellant informing him that he could submit reply to the report of the enquiry officer as the article of charges was proved against him to the extent indicated in the report and also why punishment of dismissal as proposed be not inflicted upon him. Reply to the show cause notice was submitted by the appellant on 27th March, 2006, which was found to be unsatisfactory and an order dated 13th April, 2006, was passed terminating the services of the appellant with immediate effect and directing that the name of the appellant be struck off from the rolls of the College. In accordance with the rules provided in the Maharashtra Universities Act, 1994, the appellant preferred an appeal before the Tribunal, and, as

aforesaid, the same was dismissed vide order dated 10th November, 2006. Writ against the said order as aforenoticed was also dismissed.

3. In the order of the Tribunal it was specifically noticed that out of the entire article of charges, the appellant was exonerated in the article of charges at (a), (e), (g)and (i), while for the remaining charges he was found guilty. Similarly, in the second charge-sheet, out of the nine article of charges, he was found to be guilty of seven charges. All these charges related to misappropriation of funds, not maintaining the account of provident fund, misplacing of files and correspondence of the College pertaining to some specific teachers, misplacing cash books and official salary sheets, yearly affiliation was not sent to the University for the years 2002-2003 and 2003-2004, levelling of grafting charges against the appellant by the lecturers, non-deposit of collection of fee from various students, etc.

4. The departmental enquiry was conducted in accordance with the Rules and no error or violation of Rules was found by the Tribunal in its order. The Tribunal vide a very detailed order discussed the entire evidence and came to the conclusion that the appellant was guilty of

misconduct and, in fact, he was trying to shift his blame and responsibility to his colleagues. The penalty imposed by the authorities was found to be reasonable by the Tribunal which declined to interfere with the order in relation to the quantum of punishment. Besides the fact that all this was found to be free of any error by the learned single Judge, the contention raised before us are also without any merit. It cannot be argued in a departmental proceeding that as no departmental proceedings have been initiated against others who, according to the appellant, are guilty and no punishment has been imposed upon them, the departmental proceedings against the appellant would stand vitiated. It lies in the jurisdiction of the disciplinary authority to examine the matter and then to decide against whom what action is to be taken and what punishment is to be imposed against any or all of the persons involved in the misconduct. In the present case, this argument, in any case, is of no consequence inasmuch as during the course of argument it was stated before us that the Principal in charge of the College during that period had retired before the proceedings could be initiated against the appellant and the Clerk who was working under the appellant also left the job at that time. The reference to Article 14 in this regard is entirely misplaced. It is not for this Court to re-appreciate the evidence in exercise of its jurisdiction

under Article 226 of the Constitution of India. All the authorities, upon appreciation of the evidence adduced in the departmental proceedings, have come to the conclusion that article of charges against the appellant to the extent indicated above is proved. Keeping in view the seriousness of the charges, we do not think that the action of the respondents at all calls for any judicial intervention on the punishment being excessive or disproportionate to the gravity of the article of charges. It is a settled principle of law that quantum of punishment squarely falls within the domain and discretion of the disciplinary authority. The only exception to the rule is when the punishment imposed is unconscionable or shakes the judicial conscience of the Court and is patently disproportionate to the gravity of the article of charges. None of these conditions are satisfied in the present case. For the reasons aforestated, we see no reason to interfere with the view taken in the judgment impugned in the present appeal.

5. Thus the appeal is dismissed. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

CHIEF JUSTICE

SMT. RANJANA DESAI, J.